

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 367 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE R.BALIA.

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

M/S I B MODEL FARM PVT LTD

Appearance:

MR MJ THAKORE INSTRUCTED BY MR MANISH R BHATT for
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE R.BALIA.

Date of decision: 06/12/96

ORAL JUDGEMENT

(Per Rajesh Balia, J)

1. At the instance of revenue, the Income Tax Appellate Tribunal Ahmedabad Bench 'A' had submitted statement of the case and referred the following question

of law arising out of its appellate order in ITA No. 1069/Ahd/79 relating to assessment year 1975-76:

"Whether, on the facts and in the circumstances of the case, notwithstanding the transfer of the possession of the land and receipt of compensation of the land and period relevant to the assessment year 1975-76, no capital gains arise to the assessee because that award under the Land Acquisition Act, 1981 was made on 9.1.1989."

2. The facts as found by the Tribunal in this regard are that an agreement dated 4.7.1974 was entered between the assessee and the GIDC in respect of the lands in question which were the subject matter of land acquisition proceedings under the Land Acquisition Act, 1894, that the compensation at certain rate was to be paid to the assessee and that interest on the total amount of compensation due was to be paid from the date on which possession was handed over. In pursuance of the agreement as per the records made, possession was handed over on the date of agreement, that is, 4.7.1974 to G.I.D.C. while acquisition proceedings were pending. The assessee received an amount of Rs.9,12,000/- towards advance compensation on 7.10.74 from G.I.D.C. However, an award under the Act was made on 9.1.1978. While considering the assessment of income for the assessment year 1975-76, the Income Tax Officer was of the opinion that Section 11 of the Land Acquisition Act merely formalised the agreement dated 4.7.1974 but for all practical purposes the property vested in the transferee on 4.7.1974. Therefore capital gain arose on the transfer of land in question on 4.7.1974, during the previous year relevant to the assessment year in question. Accordingly, he computed capital gains arising out of consideration received by the assessee and brought it to the tax.

3. On appeal, the Commissioner (Appeals) was of the opinion that since the transfer has taken place under Land Acquisition Act, the land would vest in the acquirer only on making of an award and not earlier to it under Section 16 of the Act. The view was affirmed on further appeal by the Tribunal and on that premise it was held that since transfer has taken place under Land Acquisition Act, transfer of the asset could take place only on the making of an award, which had taken place on 9.1.1978 and that the capital gains was not taxable in the assessment year 1975-76.

4. During the course of arguments, it has been brought to our notice that the issue is directly covered by the ratio laid in decision of this Court in C.I.T., Gujarat-II vs. Purshottambhai Maganbhai Hatheesing (HUF) reported in 156 ITR 150.

5. The facts in which the question had arisen before this court were that the lands belonging to the assessee were compulsorily acquired by the Land Acquisition Officer by an award dated February 3, 1971, although the possession of the land had been taken over on December 29, 1970 by private negotiations without exercising the urgency powers under Section 17 of the Land Acquisition Act 1894. The Income Tax Officer brought the capital gains arising from the amount of compensation to tax in the assessment year 1971-72, the previous year being calendar year 1970 by holding that transfer had taken place when possession was handed over by the assessee. The Tribunal held that the title to the land would vest in the Government only on February 3, 1971, i.e., when the award was made by the Land Acquisition Officer, and hence the capital gains could not be brought to tax in the assessment year 1971-72. In the aforesaid circumstances, the question which came up before this court to be considered was whether the capital gains arising from compulsory acquisition of land arose in the previous year corresponding to assessment year 1971-72 and became taxable in that assessment year. Taking into consideration that it was common ground for taking over possession of the land, no urgency powers were exercised by the Collector, the court came to the conclusion while answering the question in negative:

"It is trite position in law that capital gains arising out of the receipt of the compensation for the acquired land can be brought to tax in the year in which the transfer is effected as laid down under s.45 of the I.T. Act, 1961. The transfer is effected when the possession is taken over pursuant to the award under the provisions of the Land Acquisition Act, since under s.11, on an award being made, the property vests in the Government free from all encumbrances (See Topandas Kundanmal v. CIT(1978) 114 ITR 237 (Guj); New Jehangir Vakil Mills' case (1979) 117 ITR 849 (Guj) and Jetmull Bhojraj v. State of Bihar, AIR 1972 SC 1363). In that view of the matter, capital gains could have been brought to tax in the year 1972-73, since the award was made on February 3, 1971, and the possession, which though taken earlier in December, 1970, would not

vest the title to the property in the Government till the award is made. We may remind ourselves that it was common ground that for taking over the possession of the land, no urgency powers were exercised by the Collector."

6. The aforesaid decision is on all fours to the facts of the present case and is binding on us. Following the aforesaid decision, we answer the question referred to us in affirmative, that is to say, in favour of the assessee and against the revenue. The reference accordingly stands disposed of with no order as to costs.
